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(s/h/a “MTA New York City Transit”),
Donald Houston, Phakeshia Murphy, and
Alfredo Caminero (s/h/a “Alfred Caminero”)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GENEVA AIKEN,

Plaintiff,

Case No.: 1:18-CV-11756-GBD-DF

-against-

**DECLARATION OF
BETH L. KAUFMAN**

MTA NEW YORK CITY TRANSIT, DONALD
HOUSTON, *In His Individual and Official
Capacities*, PHAKESHIA MURPHY, *In Her
Individual and Official Capacities*, and ALFRED
CAMINERO, *In His Individual and Official
Capacities*,

Defendants.

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Beth L. Kaufman declares, pursuant to 28 U.S.C. § 1746 and under
penalty of perjury:

1. I am a member of Schoeman Updike & Kaufman LLP, attorneys for
defendants New York City Transit Authority (the “Transit Authority”) (s/h/a MTA
New York City Transit), Donald Houston, Phakeshia Murphy, and Alfredo
Caminero (s/h/a “Alfred Caminero”) (collectively, the “Defendants”). I am familiar
with the prior proceedings in this action and make this declaration in support of

Defendants' motion in *limine* to preclude the introduction of certain evidence at the trial of this action, which evidence is set forth in the attached Appendix, and, specifically, to provide the Court with Exhibits A – D attached hereto.

2. Defendants seek to exclude, *inter alia*, evidence related to the mischaracterization of Plaintiff's resignation as a "constructive discharge"; any evidence that relates to job-related training, evaluations, investigations, or other conduct, apart from Plaintiff's demotion, as an adverse action upon which a claim of discrimination or retaliation could be based; Plaintiff's request for religious accommodation as a basis for retaliation or an affirmative failure to accommodate; and other irrelevant or highly misleading and confusing documentary and testimonial evidence.

3. Examples of the types of documentary evidence Defendants seek to exclude are attached hereto within Exhibits A-D, and are:

- a. Documents that address training (Plaintiff's proposed exhibits 82 and 98, attached hereto as Ex. A);
- b. Documents from investigations by the Transit Authority, given that this Court has found that how the investigation was conducted cannot constitute an adverse employment action (Plaintiff's proposed exhibit 94, attached hereto as Ex. B);
- c. Letters from Plaintiff's church and requests by Plaintiff for religious accommodation (Plaintiff's proposed exhibits 33, 42, 63-64, attached hereto as Ex. C); and

- d. Any other documents or witnesses whose testimony is irrelevant to the remaining claims in this case or whose probative value is substantially outweighed by the risks of confusing and misleading the jury, such as an October 16, 2017 e-mail from Plaintiff to Reyes and Caminero regarding making copies and a Dual Employment/Outside Activity Form signed by Plaintiff (Plaintiff's proposed exhibits 34 and 49, attached hereto as Ex. D).

We will be happy to supply the Court with copies of all of the exhibits we propose to exclude, should the Court desire to see all of them.

WHEREFORE, it is respectfully requested that the Court grant the motion of Defendants, in its entirety.

Dated: May 11, 2023


Beth L. Kaufman

APPENDIX

No.	Description	Objection
1	Aiken's G2 to Houston, AIKEN 000006 – 000008, AIKEN CONFIDENTIAL 000151, 000152-000153	Training-related document irrelevant to the issues at trial.
3	Aiken's Cash Out Sick Days Memo, AIKEN 000010	Irrelevant to the issues at trial.
4	Email RE Evaluations on a Fair Chance, AIKEN 000012	Training-related document irrelevant to the issues at trial.
5	Email RE Three Month Evaluation, AIKEN CONFIDENTIAL 000015	Training-related document irrelevant to the issues at trial.
7	Aiken's Complaint to Affirmative Action Office, AIKEN CONFIDENTIAL 000416 – 000418	Training-related document irrelevant to the issues at trial.
33	December 2017 Church Letter, NYCTA000044	Failure to accommodate has been adjudicated in Defendants' favor.
34	Email RE Authorized Personnel, NYCTA000045	Irrelevant to the issues at trial.
41	Memo RE Sabbath Observance Request for Aiken, NYCTA000061	Failure to accommodate has been adjudicated in Defendants' favor.
42	January 2017 Church Letter, NYCTA000062	Failure to accommodate has been adjudicated in Defendants' favor.
43	July 2017 Church Letter, NYCTA000063	Failure to accommodate has been adjudicated in Defendants' favor.
49	Application Access Request Form for Aiken, NYCTA000071 – 000072	Irrelevant to the issues at trial.
50	Email RE I-Vault Request Notification, NYCTA000073	Irrelevant to the issues at trial.
52	Aiken's DBO UTS/EIS Database Access Request Form, NCYTA000075	Irrelevant to the issues at trial.
53	Aiken's FEMA Certificates, NYCTA000076 – 000077	Irrelevant to the issues at trial.

54	Aiken's Acknowledgement & Receipt of Understanding, NYCTA000078	Irrelevant to the issues at trial.
55	Aiken's Dispatcher Badge Replacement/Turn In Form, NCYTA000079	Irrelevant to the issues at trial.
56	Application Access Request Form for Aiken, NYCTA000080	Irrelevant to the issues at trial.
57	Information for Depot & Training Center, NYCTA000081	Training-related document irrelevant to the issues at trial.
57	Information for Depot & Training Center, NYCTA000081	Irrelevant to the issues at trial.
58	Memo RE Reporting to Supervisor, NYCTA000082	Irrelevant to the issues at trial.
59	Aiken's Dual Employment/Outside Activity Form, NYCTA000083	Irrelevant to the issues at trial.
60	Acknowledgment RE Misuse of Patrol Autos, NYCTA000084	Irrelevant to the issues at trial.
61	Aiken's Application for Employee Parking Permit, NYCTA000085 – 000086	Irrelevant to the issues at trial.
63	July 2017 Church Letter, NYCTA000097	Failure to accommodate has been adjudicated in Defendants' favor.
64	July 2016 Church Letter, NYCTA000098	Failure to accommodate has been adjudicated in Defendants' favor.
70	Interview Notes, NYCTA000157 – 000160	Facts pertaining to the investigation are irrelevant to the issues at trial.
71	Interview Notes, NYCTA000161 – 000162	Facts pertaining to the investigation are irrelevant to the issues at trial.
73	Memo RE Aiken's Sabbath Observance Request, NYCTA000246	Failure to accommodate has been adjudicated in Defendants' favor.
74	Email RE Hands-On Request, NYCTA000247	Training-related document irrelevant to the issues at trial.

75	2017 Religious Accommodation Approval, NYCTA000252	Failure to accommodate has been adjudicated in Defendants' favor.
81	Email RE Hands On Request, NYCTA000280	Training-related document irrelevant to the issues at trial.
82	Email RE Crew, Yard, General Training, NYCTA000281	Training-related document irrelevant to the issues at trial.
83	Email RE Evaluation on Fair Chance, NYCTA000287	Training-related document irrelevant to the issues at trial.
84	Email RE No Knowledge of U/A on My Record, NYCTA000288	Irrelevant to the issues at trial.
85	Email RE Religious Observance Letter 2018, NYCTA000289	Failure to accommodate has been adjudicated in Defendants' favor.
86	Religious Accommodation Instructions, NYCTA000290 – 000291	Failure to accommodate has been adjudicated in Defendants' favor.
88	Email from Caminero RE Aiken's Religious Accommodation Request, NYCTA000306	Failure to accommodate has been adjudicated in Defendants' favor.
89	Email RE Aiken's Complaint of Harassment, NYCTA000307	Failure to accommodate has been adjudicated in Defendants' favor.
90	Email from McGahren, NYCTA000330	Failure to accommodate has been adjudicated in Defendants' favor.
91	Email RE Evaluations on a Fair Chance, NYCTA000355 - 000361	Failure to accommodate has been adjudicated in Defendants' favor.
92	Memo from Aiken to Houston, NYCTA000362 - 000364	Training-related document irrelevant to the issues at trial.
94	Email RE Evaluation on Fair Chance, NYCTA000355 - 000361	Training-related document irrelevant to the issues at trial.
95	Interview Notes, NYCTA000375 - 000376	Facts pertaining to the investigation are irrelevant to the issues at trial.

96	Interview Notes, NYCTA000377 - 000387	Facts pertaining to the investigation are irrelevant to the issues at trial.
97	Interview Notes, NYCTA000388 – 000393, 000396	Facts pertaining to the investigation are irrelevant to the issues at trial.
98	Email RE Aiken's Complaint to Dhuman, NYCTA000394 - 000395	Training-related document irrelevant to the issues at trial.
107	Procedure for Religious Accommodation, NCYTA001305 – 001306	Failure to accommodate has been adjudicated in Defendants' favor.
115	Religious Accommodations Instructions, NYCTA001801	Failure to accommodate has been adjudicated in Defendants' favor.
116	Religious Accommodations Policy, NYCTA001802 – 001805	Failure to accommodate has been adjudicated in Defendants' favor.
117	Caminero's List of Training, NYCTA002371 - 02375	Training-related document irrelevant to the issues at trial.
118	Houston's List of Training, NYCTA002376 - 002378	Training-related document irrelevant to the issues at trial.
119	Murphy's List of Training, NYCTA002471 - 002476	Training-related document irrelevant to the issues at trial.
120	Supervisor's Guide to Reasonable Accommodation of Religious Observance or Practices, NYCTA002476 - 002484	Failure to accommodate has been adjudicated in Defendants' favor.
121	Taking Control of the Road, Road Control Training Manual, Department of Buses, Training Division, NCYTA002502 - 002542	Training-related document irrelevant to the issues at trial.

No.	Witness	Objection
5	John P. Dhuman, Deputy General Manager: can testify to Plaintiff's accommodation requests, as well as the discrimination,	Failure to accommodate has been adjudicated in Defendants' favor.

	retaliation, and hostile work environment endured by Plaintiff.	
6	Emilio Reyes: can testify to Plaintiff's accommodation requests, as well as the discrimination, retaliation, and hostile work environment endured by Plaintiff.	Failure to accommodate has been adjudicated in Defendants' favor.
7	Amadu Haruna: can testify to Plaintiff's accommodation requests, as well as the discrimination, retaliation, and hostile work environment endured by Plaintiff.	Failure to accommodate has been adjudicated in Defendants' favor.
8	Patrick Bambury: can testify to Plaintiff's accommodation requests, as well as the discrimination, retaliation, and hostile work environment endured by Plaintiff.	Failure to accommodate has been adjudicated in Defendants' favor.
9	Antonio Seda, Assistant Vice President of EEO Investigations: can testify as to the investigation process into Plaintiff's complaints.	Insufficient investigation has been adjudicated in Defendants' favor.
10	Jacob A. Goins, NYCTA'S EEO Officer: can testify as to the investigation process into Plaintiff's complaints.	Insufficient investigation has been adjudicated in Defendants' favor.
11	Alexander T. Linzer, NYCTA'S EEO Director for EEO Investigations: can testify as to the investigation process into Plaintiff's complaints.	Insufficient investigation has been adjudicated in Defendants' favor.
12	Cathy Gonzalez, Investigator: can testify to Plaintiff's religious accommodation requests.	Failure to accommodate has been adjudicated in Defendants' favor.
13	Danielle Brogan, Director, Collective Bargaining, Office of Labor Relations, New York City Transit: can testify to Plaintiff's religious accommodation requests.	Failure to accommodate has been adjudicated in Defendants' favor.
14	Michael Lawson, TSO: can testify to the end of Plaintiff's employment.	Plaintiff has not provided any information or documentation about this individual.
15	Robert Bruno, General Manager Bronx Division: can testify to the end of Plaintiff's employment.	Inadequate, vague identification of subject of testimony
16	Thomas Burke, General Superintendent, MTA/MABSTOA: was present and can testify about Plaintiff's alleged disciplinary issues, Plaintiff's demotion, meeting held with Plaintiff and Defendant Caminero regarding	Inadequate, vague identification of subject of testimony

	demotion, Plaintiff's claims of discrimination and Plaintiff's ongoing complaints to the MTA about discrimination, hostile work environment and retaliation.	
17	John McGahern, served as the General Superintendent at M.J. Quill Bus Depot in the year 2016 and addressed Plaintiff's previous religious accommodation request while a Bus Operator.	Failure to accommodate has been adjudicated in Defendants' favor.
18	Arlene Benjamin: can testify to Plaintiff's discrimination, harassment, and hostile work environment, particularly with the religious accommodation requests.	Failure to accommodate has been adjudicated in Defendants' favor.
19	SLD Joselito Valentine: can testify to Plaintiff's discrimination, harassment, and hostile work environment.	Plaintiff has not provided any information or documentation about this individual.
20	BO Stewart can testify to Plaintiff's discrimination, harassment, and hostile work environment.	Plaintiff has not provided any information or documentation about this individual.
21	BO (First Name Unknown) Maldonado: can testify to Plaintiff's discrimination, harassment, and hostile work environment.	Plaintiff has not provided any information or documentation about this individual.
22	BO Ochere (Last Name Unknown): can testify to Plaintiff's discrimination, harassment, and hostile work environment.	Plaintiff has not provided any information or documentation about this individual.
23	Latonya Crisp-Sauray, Recording Secretary TWU Local 100: can testify to Plaintiff's complaints about failure to provide religious accommodations.	Failure to accommodate has been adjudicated in Defendants' favor.